

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of Invasive
Species/Infested Waters Citation
#132997 Issued to Zachary D. Fabry

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a Prehearing Telephone Conference on July 18, 2012. Administrative Law Judge (ALJ) Richard C. Luis, Conservation Officer Thor Nelson, Zachary D. Fabry and Robert Knapp participated in the Conference. The parties agreed that no formal hearing would be needed and that the ALJ could make a recommendation based on the record created during the Prehearing Telephone Conference. To that end, Officer Nelson, Zachary Fabry, and Robert Knapp all testified under oath. The OAH record closed at the conclusion of the Prehearing Conference.

STATEMENT OF ISSUE

Whether Zachary D. Fabry violated Minn. Stat. § 84D.10, subd. 4(b), when he transported his watercraft on a public road with the drain plug in place?

The Administrative Law Judge concludes that Zachary D. Fabry violated Minn. Stat. § 84D.10, subd. 4(b), on June 5, 2012. Accordingly, the Administrative Law Judge **RECOMMENDS** that the Commissioner **AFFIRM** the citation.

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Department of Natural Resources (Department, DNR) Conservation Officers are authorized to issue warnings or citations to a person who fails to remove plugs from water-related equipment before transporting that equipment.¹

2. On June 5, 2012, Officer Nelson observed Zachary Fabry pull a boat off a public road to a public access point on Prior Lake in Scott County. Mr. Fabry was accompanied by his friend, Robert Knapp. The boat had its drain plug in place during the time it was being transported.²

¹ See Minn. Stat. § 84D.13, subd. 4(4).

² Testimony of Officer Nelson.

3. Officer Nelson issued Citation No. 132997 to Mr. Fabry. The citation asserted that Mr. Fabry transported a watercraft on a public road with its drain plug in place.³

4. Sometime before issuing the Citation to Mr. Fabry, Officer Nelson had been instructed by his superiors in the Department to stop issuing warnings for plug violations.⁴

5. Zachary D. Fabry timely appealed the citation.⁵ He argues that Officer Nelson should only have issued him a warning because he is a casual boater who was completely unaware of the law requiring removal of drain plugs. He admits the plug had not been removed.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Natural Resources have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 116.072, subd. 6.

2. The Department has substantiated the violation of Minn. Stat. § 84D.10, subd. 4(b), and Citation #132997.

3. It is appropriate that the Commissioner **AFFIRM** Civil Trespass Citation #132997 and require Mr. Fabry to pay a \$50 fine for violating Minn. Stat. § 84D.10, subd. 4(b).

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of Natural Resources **AFFIRM** the Citation issued to Zachary D. Fabry on June 5, 2012.

Dated: July 25th, 2012

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Reported: Recorded Digitally

³ Citation 132997.

⁴ Testimony of Officer Nelson.

⁵ Appeal Letter June 20, 2012.

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6 (e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may, within those five days, comment to the Commissioner and the Commissioner will consider the comments. The Commissioner must send a copy of the final decision to Zachary D. Fabry. The final order of the Commissioner may be appealed pursuant to Minn. Stat. §§ 14.63-14.69. If the Commissioner fails to act within 90 days after the record closes, this recommendation will become the final decision in this matter.

MEMORANDUM

Mr. Fabry admits he violated Minn. Stat. § 84D.10, subd. 4(b), on June 5, 2012. Under § 84D.13, subd. 4(4), law enforcement personnel may issue citations for such violations. Officer Nelson had been instructed by his superiors to issue citations every time he observed violation of the “plugs out” law. The “zero tolerance” instruction resulted after the Department concluded that merely warning the violators had not lessened the frequency of violations of the “plugs out” law.⁶

It was noted that since enforcement personnel were instructed to issue only Citations for plug violations, violation of the law in the Twin Cities Metropolitan Area has decreased. The DNR also has been utilizing non-enforcement personnel at access points to inform the boating public of the “plugs out” law.⁷

Mr. Fabry argues that he is a casual boater who did not know about the “plugs out” law. Therefore, a warning alone would be appropriate.

In this case, there was no abuse of discretion on the part of Officer Nelson, who was following an instruction to cite every violation he observed. Therefore, it is appropriate to uphold the citation against Mr. Fabry.

R. C. L.

⁶ Testimony of Officer Nelson.

⁷ Testimony of Officer Nelson, Mr. Fabry and Robert Knapp.